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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/515,928	02/29/2000	Bert Whitmore Elliott	24673A	1357

7590 12/02/2005
OWENS CORNING
2790 COLUMBUS ROAD
BUILDING 54
GRANVILLE, OH 43023

EXAMINER

CANFIELD, ROBERT

ART UNIT PAPER NUMBER

3635

DATE MAILED: 12/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/515,928

Applicant(s)

ELLIOTT, BERT WHITMORE

Examiner

Robert J. Canfield

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 17-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 17-24, 27-45 is/are rejected.
- 7) ☒ Claim(s) 25 and 26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 February 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/6/04, 12/13/04.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submissions filed on 07/22/05 and 01/24/05 have been entered. Claims 1-8 and 17-45 are pending. Claims 9-16 have been canceled.

2. The disclosure is objected to because of the following informalities: on page 10, line 23, reference numeral "62" should be changed to reference numeral - - 60 - - as reference numeral 60 has been used to designate the beveled edges.

Appropriate correction is required.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Defining the color blend of a tab of the shingle in relation to a different shingle renders the color indefinite, as the different shingle is not an element of the claim.

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5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1-6, 8, 17-22, 24, 27-29, 31-35, and 37-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,014,847 to Phillips in view of U.S. Patent 1,843,370 to Overbury.

Phillips provides laminated shingles having overlay member 12 provided with generally rectangular tabs 20a-20c of different sizes, which are separated by cutouts 22a-22c. The widths of the cutouts are considered sufficiently narrow to simulate slate tiles. Further, the reference states that the widths of the tabs may be varied depending on the desired appearance, which would suggest that the tabs could have been made wider which would result in narrower cutouts. The overlay 12 is laminated to an underlay 14 which is provided a layer of granules substantially darker than that those of the overlay. The lower edge of overlay member is shown generally co-linear with the lower edge of the underlay member. Tabs 20a-2c include layers of relatively dark granules 38 at upper and lower edges thereof. In a product claim the manner in which the granules are applied is irrelevant.

Phillips fails to teach that the color blends of the tabs of the overlay members are different from another.

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Overbury teaches that at the time of the invention it was known to make the tabs of a shingle of different colors and to confine each color to the portion which corresponds to one tab (column 2, lines 20+) for aesthetic purposes.

It would have been obvious at the time of the invention to one having ordinary skill in the art that the tabs of the overlay of Phillips could have been provided with color blends different from one another as taught by Overbury to achieve a desired artistic effect. Phillips teaches at the top of column 4, that it should be understood that different color arrangements could be used.

7. Claims 1, 2, 5, 8, 17, 18, 21, 24, 27, 28, 29, 31, 33-35, 37, and 39-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,195, 290 to Hulett in view of U.S. Patent 1,843,370 to Overbury.

Hulett provides laminated shingles having overlay members provided with a plurality of generally rectangle tabs (figures 5, 6, and 8) separated by cutouts and underlay members provided with darker granules for a more pleasing appearance (column 4, lines 63+).

Hulett fails to teach that the color blends of the tabs of the overlay members are different from another.

Overbury teaches that at the time of the invention it was known to make the tabs of a shingle of different colors and to confine each color to the portion which corresponds to one tab (column 2, lines 20+) for aesthetic purposes.

It would have been obvious at the time of the invention to one having ordinary skill in the art that the tabs of the overlay of Hulett could have been provided with color blends different from one another as taught by Overbury to achieve a desired artistic effect.

8. Claims 1, 2, 5, 7, 8, 17, 18, 21, 23, 27-31, 33-37, and 39-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,939,169 to Bondoc et al. in view of U.S. Patent 1,843,370 to Overbury.

Bondoc laminated shingles having overlay members provided with a plurality of generally rectangle tabs 16 and separated by narrow cutouts which have beveled edges in the embodiment of Figures 4A-4C, and underlay members 11, 15 provided with darker granules.

Bondoc fails to teach that the color blends of the tabs of the overlay members are different from another.

Overbury teaches that at the time of the invention it was known to make the tabs of a shingle of different colors and to confine each color to the portion which corresponds to one tab (column 2, lines 20+) for aesthetic purposes.

It would have been obvious at the time of the invention to one having ordinary skill in the art that the tabs of the overlay of Bondoc could have been provided with color blends different from one another as taught by Overbury to achieve a desired artistic effect.

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9. Claims 25 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Applicant's arguments with respect to Weaver '929 and Blanpied '513 have been considered but are moot in view of the new ground(s) of rejection.

11. The declaration under 37 CFR 1.132 filed 01/24/05 with respect to Weaver '929 and Blanpied '513 have been considered but is moot in view of the new ground(s) of rejection.

The declaration fails to show adequate evidence of long felt need, unexpected results and commercial success as set forth in MPEP 716.

It refer(s) only to the system described in the above referenced application and not to the individual claims of the application. Thus, there is no showing that the objective evidence of nonobviousness is commensurate in scope with the claims. It states that the claimed subject matter solved a problem that was long standing in the art. However, there is no showing that others of ordinary skill in the art were working on the problem and if so, for how long. In addition, there is no evidence that if persons skilled in the art who were presumably working on the problem knew of the teachings of the above cited references, they would still be unable to solve the problem.

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12. The examiner acknowledges receipt of the IDS's filed 07/06/04 and 12/13/04.

Initialed copies of the 1449 forms are attached.

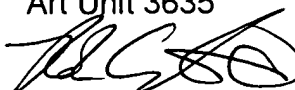
13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. Canfield whose telephone number is 571-272-6840. The examiner can normally be reached on M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert J Canfield
Primary Examiner
Art Unit 3635



11/18/05